BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SONIA E.L. PAVAO	)	
Claimant	)	
	)	
VS.	)	
	)	
COBALT BOATS	)	
Respondent	)	Docket No. 1,035,731
	)	
AND	)	
	)	
WAUSAU	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the November 30, 2007 preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

ISSUES

The Administrative Law Judge (ALJ) denied the claimant's claim for compensation finding that although the claimant suffered an accident on August 30, 2006, she failed to make a timely written claim within the time prescribed by statute.

The claimant requests review of this decision alleging that her written accident report satisfies the statutory written claim requirement. Claimant also contends that she filed her Application for Hearing on July 25, 2007, a date that is within 200 days of the date her employer disabused her of her belief that she had an ongoing right to medical treatment. Under either scenario, claimant maintains her claim is timely filed and the ALJ's preliminary hearing Order should be reversed.

Respondent argues that the ALJ's order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

The claimant, a production worker for respondent, reported a wrist injury to her employer on August 30, 2006. Respondent's nurse, Julie, gave claimant a form to complete. On this form, which is entitled Associate's First Report of Injury, claimant described what happened as follows: "bending on push[in]g on wrist, picking things that are heavy". The form then asks "What were you doing immediately prior to injury?" to which claimant responded "I work on carpet, pulling and vinyl." The next question, "What object or substance directly caused injury?" drew the following response: "I think it was the staple gun the way I held it or put pressure on it."[1]

Julie then referred claimant to Dr. Moorhead who took her off work as of September 1, 2006 and gave her splints. Respondent filed an accident report with the Division on September 13, 2006. After a total of 3 visits, claimant was released to return to her regular duties on September 15, 2006. Respondent paid for this last medical visit on November 2, 2006. Claimant returned to work but testified that she continued to have problems. Claimant worked for respondent until December 21, 2006.

Claimant then left work for a vacation. When she returned, she called respondent about her inability to work and her need for further treatment, but got no immediate response. According to claimant, she contacted Dr. Moorhead's office who referred her back to the respondent. Claimant finally reached Julie in July 2007 and was advised that the respondent would not be providing treatment. Thereafter, on July 25, 2007, claimant filed an E-1 with the Division.

There is apparently no dispute that claimant sustained and gave notice of an accidental injury arising out of her repetitive work duties on August 30, 2006. And based upon K.S.A. 44-508(d), this accident is deemed to have occurred September 1, 2006, the date the authorized physician, Dr. Moorhead, took claimant off work. Thus, for purposes of any time deadlines, this is the operative date from which all calculations must begin.

K.S.A. 44-520a(a) provides for written claim to be served within 200 days of the accident date. Under certain circumstances, the time period for serving written claim upon the employer may be extended to one year. K.S.A. 44-557(a) requires every employer to report accidents of which it has knowledge within 28 days of receiving such knowledge. Subsection (c) of K.S.A. 44-557 provides:

---

[1] P.H. Trans., Cl. Ex. 4.

> (c) No limitation of time in the workmen's compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced before the director within one (1) year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

Here, respondent filed an accident report with the State on September 13, 2006, within the 28 day period required by the statute. Thus, claimant's written claim must have been served within 200 days of September 1, 2006, the claimant's date of accident. And the only document that was served in that period was the "Associate's First Report of Injury". Thus, the contents of this document is particularly important in determining whether it meets the statutory purpose.

A written claim for compensation need not take on any particular form, so long as it is, in fact, a claim.[2] Furnishing medical care to an injured employee is the equivalent of an employer paying compensation under the Act.[3] In determining whether medical care is compensation under the Act, the question is whether the medical care was authorized by the employer, either expressly or by reasonable implication.[4] If an employer is on notice that an employee is seeking treatment on the assumption that treatment is authorized by the employer, the employer is under a duty to disabuse the employee of that assumption if the employer expects the 200-day or 1-year limitation to take effect.[5]

In this instance, it appears from all the evidence that respondent understood claimant was making a claim for a work-related injury. The form claimant was required to fill out utilizes questions intended to illicit information about an injury and how it happened. Following the completion of that form, respondent provided medical treatment and even went so far as to file a report as required by K.S.A. 44-557.

Although respondent argues that an earlier decision in *Sears*[6] mandates an affirmation of the ALJ's preliminary hearing Order, this Board Member disagrees. *Sears*

---

[2] *Lawrence v. Cobler*, 22 Kan. App. 2d 291, 294, 915 P.2d 157, *rev. denied* 260 Kan. 994 (1996).

[3] *Sparks v. Wichita White Truck Trailer Center, Inc.*, 7 Kan. App. 2d 383, Syl. ¶ 1, 642 P.2d 574 (1982).

[4] *Id.* at Syl. ¶ 2.

[5] *Shields v. J.E. Dunn Constr. Co.*, 24 Kan. App. 2d 382, 385-86, 946 P.2d 94 (1997).

[6] *Sears v. Emerson Electric Co.*, Docket No. 205,024, 1996 WL 46464 (Kan. WCAB Jan. 29, 1996).

involved a claimant who returned to work with a light-duty slip following an injury. That respondent argued that the light-duty slip did not meet the statutory requirements set forth under K.S.A. 44-520a. The Board agreed, stating that "based on the particular facts of this case, that a written slip from a physician stating that claimant was returned to light-duty work does not constitute a written claim for workers compensation benefits."[7] Thus, the claimant's claim was not filed in a timely manner.

This case is altogether different from *Sears.* In this case respondent was given a document which pointedly asks claimant *how* her accident happened and what tools were involved. Claimant described her job duties and how it has come to injure her wrists. Additionally, immediately after this form was completed, claimant was referred for medical treatment with Dr. Moorhead. Based upon these facts, this Board Member is persuaded that the document claimant served upon respondent on August 30, 2006 met the statutory requirements.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.[8] Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Thomas Klein dated November 30, 2007, is reversed.

IT IS SO ORDERED.

Dated this _____ day of February 2008.

_____
JULIE A.N. SAMPLE
BOARD MEMBER

c: James A. Cline, Attorney for Claimant
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge

---

[7] *Id.* at 2.

[8] K.S.A. 44-534a.